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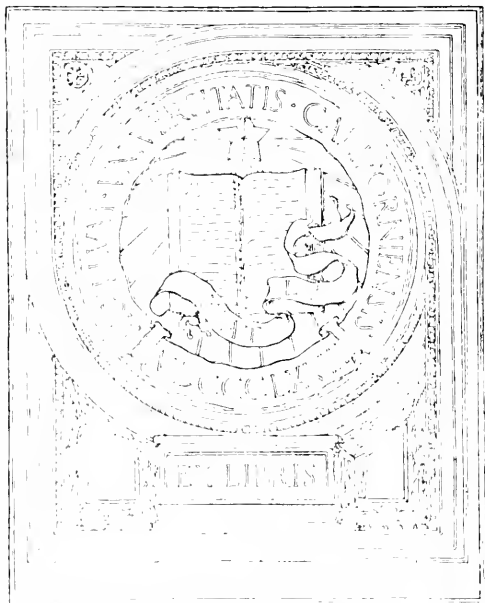
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Correspondence on the sub-
ject of non-disseminants, etc.,
between T. Butler King, collector,
and J. Vincent Brown, non-disseminant

by
Thomas Butler King

UNIVERSITY OF CALIFORNIA
AT LOS ANGELES



ROBERT ERNEST COWAN

CORRESPONDENCE

ON THE SUBJECT OF

APPRAISEMENTS, &c.,

BETWEEN

T. BUTLER KING, COLLECTOR,

AND

J. VINCENT BROWNE, APPRAISER,

CUSTOM HOUSE,

SAN FRANCISCO, CALIFORNIA.

WITH THE OPINION THEREON

OF ONE OF THE GENERAL APPRAISERS,

AND THE

SECRETARY OF THE TREASURY.

WASHINGTON:

1852.

RECEIVED
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CORRESPONDENCE.

The Collector of San Francisco to the Appraiser.

Custom House, San Francisco, }
Collector's Office, June 9th, 1852. }

J. VINCENT BROWNE, Esq., U. S. Appraiser.

Sir :—

I enclose herewith a German Invoice for translation, and the addition of such charges as the law requires, previous to the entry being made. Hitherto a clerk has been employed in my office for this, among other duties. He has recently been dismissed in pursuance of orders from the Secretary of the Treasury, who, I have reason to believe considers the addition of the legal charges, and the necessary translation of Foreign Invoices as properly belonging to your office. If you concur in this view of the matter, I shall be obliged if you will have the service performed, and the Invoice returned, as soon as possible, as the entry cannot be made, until we receive it properly prepared. Please give me explicit information whether you consider this duty as properly belonging to your office, and whether your present force will enable you to have it performed with such promptness as will not retard the business at my entry desk.

Very respectfully,

Your obedient servant,

T. BUTLER KING, *Collector.*

The Appraiser of San Francisco to the Collector.

Custom House, San Francisco, }
 Appraiser's Office, June 10th, 1852. }

Sir:—

Your letter of the 9th instant inclosing a “German Invoice” is received.

As your letter involves questions upon which we have heretofore had discussion, and upon which we then differed in opinion, viz. in March 1851, perhaps a recapitulation of the ideas then verbally advanced by me, may be considered a full answer to the questions now propounded. In order for me to express myself understandingly, it will be necessary to refer to law, and circular instructions, and to quote largely therefrom. I beg to be understood as doing so, merely to sustain my opinions then advanced, and unchanged by the knowledge and experience since attained,—in fact confirmed by such experience,—and I do it also respectfully.

In the first clause of your letter—“I enclose herewith a German Invoice for translation and the addition of such charges as the law requires, previous to the entry being made,”—two distinct questions arise, viz: *First*, as to a translation of an Invoice and who is to make it,—and *Second*, what additions, if any, are necessary to be made, (before entry,) and who shall make them.

In answer to the first, I am clearly of the opinion that it is incumbent on the party who presents any paper to a Custom House of the United States, if in a foreign language, to produce with it a correct translation. To sustain this opinion I refer to the 36th Section of the Act of the 2d March, 1799, and

quote therefrom : "That the owner or owners, consignee or
 " consignees, of any goods, wares or merchandize, on board of
 " any such ship or vessel, or in case of his, her, or their absence
 " or sickness, his, her, or their known agent or factor, in his,
 " her, or their names, within fifteen days after the report of
 " the master, or person having the charge or command of such
 " ship or vessel, to the collector of the district for which such
 " goods, wares, or merchandize, shall be destined, shall make
 " entry thereof, *in writing*, with the said collector, and shall,
 " in such entry, specify the vessel and master's names in which,
 " and the port or place from whence, such goods, wares, or
 " merchandize, were imported, the particular marks, numbers,
 " denomination, and prime cost, including charges of each
 " particular package or parcel whereof the entry shall consist,
 " or, if in bulk, the quantity, quality, and prime cost, *including*
 " *charges thereof*, particularly specifying the species of money
 " in which the invoices thereof are made out ; and shall, also,
 " produce to the said collector and naval officer (if any) the
 " original invoice or invoices of the said goods, wares, and
 " merchandize, or other documents received in lieu thereof, or
 " concerning the same, *in the same state in which they were*
 " *received*, with the bill or bills of lading for the same ; which
 " invoices shall be signed by the persons *in the offices of the*
 " *collector and naval officer*, who shall have compared and
 " examined the same ; and the said entry or entries shall, as
 " the nature of the case will admit or require, be agreeably to
 " the form following, to wit : " Then follows the form of entry
 and the oath. This *entry in writing*, it is to be presumed is
 to be made in the English language, is a true copy of the
 invoice, and therefore, if the invoice be in a foreign language,
 is a translation of the same, made, and by law required to be
 made by the importer himself. Can it possibly be considered
 a stretch of the powers of the collector to demand of the
 importer, a copy of this translation attached to the invoice, to
 aid " the persons in the offices of the collector and naval
 officer " to compare and examine the same with the entry, and
 to aid in the appraisment also ?

If the translator of invoices has been dismissed in pursuance of orders from the Secretary of the Treasury, it may be for the causes you suggest :—unquestionably, if a translator of invoices is necessary, such person should be attached to the Appraiser's Office, as in the Collector's there is already a translation from the importer, in his entry. I should not have voluntarily alluded to your translator of invoices, but as you have referred to him, I may be pardoned for saying that he has been a source of annoyance to this office.

In answer to the second, I beg leave to refer to the 8th Section of the act of the 30th July, 1846 ;—to the 1st and 2d Sections of the act 3d of March 1851 ; * and to the Treasury

* Sec. 8. *And be it further enacted*, That it shall be lawful for the owner, consignee, or agent of imports which have been actually purchased, on entry of the same, to make such addition in the entry to the cost or value given in the invoice as in his opinion may raise the same to the true market value of such imports in the principal markets of the country whence the importation shall have been made, or in which the goods imported shall have been originally manufactured or produced, as the case may be ; and to add thereto all costs and charges which, under existing laws, would form part of the true value at the port where the same may be entered, upon which the duties should be assessed. And it shall be the duty of the collector within whose district the same may be imported or entered to cause the dutiable value of such imports to be appraised, estimated and ascertained in accordance with the provisions of existing laws ; and if the appraised value thereof shall exceed by ten per centum or more the value so declared on the entry, then, in addition to the duties imposed by law on the same, there shall be levied, collected, and paid, a duty of *twenty* per centum ad valorem on such appraised value ; *Provided*, nevertheless, That under no circumstances shall the duty be assessed upon an amount less than the invoice value ; any law of Congress to the contrary notwithstanding.—*Act 30th July, 1846.*

AN ACT to amend the acts regulating the Appraisement of Imported Merchandise, and for other purposes. Approved, March 3, 1851.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That in all cases where there is or shall be imposed any ad valorem rate of duty on any goods, wares, or merchandise imported into the United States, it shall be the duty of the collector within whose district the same shall be imported or entered, to cause the actual market value or wholesale price thereof, at the period of the exportation to the United States, in the principal markets of the country from which the same shall have been imported into the United States, to be appraised, estimated, and ascertained ; and to such value or price shall be added all costs and

Circular of November 25th, 1846, 12th paragraph to the 20th—indeed to the whole of that circular.* From the 12th

charges, except insurance, and including in every case a charge for commissions at the usual rates, at the true value at the port where the same may be entered, upon which duties shall be assessed.

Sec. 2. *And be it further enacted*, That the certificate of any one of the appraisers of the United States, of the dutiable value of any imported merchandise required to be appraised, shall be deemed and taken to be the appraisement of such merchandise required by existing laws to be made by such appraisers. And where merchandise shall be entered at ports where there are no appraisers, the certificate of the revenue officer to whom is committed the estimating and collection of duties, of the dutiable value of any merchandise required to be appraised, shall be deemed and taken to be the appraisement of such merchandise required by existing laws to be made by such revenue officer.

*Circular Instructions to Collectors and other Officers of Customs.

TREASURY DEPARTMENT,
November 25, 1846. }

For the government of the respective officers of the customs in carrying into effect the provisions of the annexed act of Congress, approved 30th July, 1846, entitled "An act reducing the duty on imports and for other purposes," the following instructions and regulations are issued, and a strict compliance therewith enjoined.

* * * * *

The additions authorized by the eighth section to be made by the owner, consignee, or agent "in the entry to the cost or value given in the invoice" where goods have been actually purchased, as also the costs and charges referred to, must be added at the time of making entry of the goods, and cannot be done subsequently. This privilege is obviously intended to afford the party an opportunity to relieve himself from the additional duty imposed by this section, where the appraised value shall exceed by ten per centum or more, the value "so declared on the entry," consequently any such additions made as aforesaid are not obligatory upon, or to control the judgment of the appraisers in estimating the value of the goods in question, who are, nevertheless, required to make appraisement of the same in conformity with the provisions of existing laws.

The principle upon which the appraisement is based is this: that the actual value of articles on ship board at the last place of shipment to the United States, including all preceding expenses, duties, costs, charges and transportation, is the foreign value upon which the duty is to be assessed. The costs and charges that are to be embraced in fixing the valuation over and above the value of the article at the place of growth, production or manufacture, are,

1st. The transportation, shipment and transshipment, with all the expenses included, from the place of growth, production, or manufacture, whether by land or water carriage, to the vessel in which

paragraph I quote, "The additions authorised by the 8th
 "Section, *to be made by the owner &c.*, * * * *in the*

shipment is made to the United States. Included in these estimates is the value of the sack, package, box, crate, hogshead, barrel, bale, cask, can, and covering of all kinds, bottles, jars, vessels, and demi-johus.

2d. Commission at the usual rate, but in no case less than two and-a-half per cent, and where there is a distinct brokerage, that to be added.

3d. Export duties, including such duties at all places from the place of the growth, production, or manufacture, to the last place of shipment to the United States.

4th. Cost of placing cargoes on board ship, including drayage, labor, bill of lading, lighterage, town dues and shipping charges, dock and wharf dues, and all charges to place the article on shipboard.

Discounts are never to be allowed in any case except on articles where it has been the uniform and established usage heretofore, and never more than the actual discount positively known to the appraiser.

The freight from the last place of shipment to the United States is not to be included in the valuation, and insurance is also excluded by law.

The eighth section provides, in certain cases, for an addition of "twenty per cent. ad valorem on such appraised value." This twenty per cent. is, as the law declares, an addition of a duty of twenty per cent. on the appraised value, and not a per centage upon the duty. Thus, if the duty upon such appraised value be twenty per cent. under the law, the addition of twenty per cent. would raise the duty to be assessed to forty per cent. ; or, if thirty per cent., to fifty per cent., and so on—making in all cases an actual addition of twenty per cent. to the rate of duty.

Inasmuch as this section gives the importer the fullest opportunity of guarding against the imposition of this additional duty, by authorizing him in all cases, notwithstanding the invoice, to raise the value to the true market rate, including all costs and charges ; differing in this respect from former provisions ; it is not expected that the Department will be called upon to interpose to relieve any importer from the payment of this additional duty of twenty per cent.

This section further provides, "That under no circumstances shall the duty be assessed upon an amount less than the invoice value, any law of Congress to the contrary notwithstanding."

* * * * *

In the appraisement of any wines, liquors, fruits, sugars, segars, oils, preserves, and such like articles, in warehouse, and which have been designated in pursuance of law by the collector for appraisement, the appraisers are at liberty to exercise a sound discretion in regard to the quantity or sample of the article to be withdrawn for examination from the cask, box, or vessel, in which it may be contained. And the storekeeper will be required to deliver to the appraisers, upon their written order, such quantities or samples of the articles

“*entry*, to the cost or value given in the invoice, &c., * *
 “as also the cost and charges referred to, must be added *at the*
 “*time of making entry of the goods*, and cannot be done
 “subsequently. This privilege is obviously intended to afford
 “the party an opportunity to *relieve himself* from the additional
 “duty imposed by this (Sth) Section, where the appraised value
 “shall exceed by ten per centum or more, the value “*so declared*
 “*on the entry*,” consequently any such additions made as
 “aforesaid are not obligatory upon or to control the judgement
 “of the appraisers in estimating the value of the goods in
 “question, who are, nevertheless, *required* to make appraise-
 “ment of the same in conformity with the provisions of *existing*
 “laws.”

I think the law clearly prescribes what additions *the owner* &c., may make, “*in the entry*, to the cost or value given in the invoice,” and I think it equally clear that the owner must make them, or abide the consequences, *on appraisement*, of his omission to do so. My mind is as clear now, as it was in March 1851, that the power is lodged *no where*, except in the appraisers, *after appraisement*, to make additions to *invoices*. The owner, at the time of entry, is only allowed to add to the value of his invoice—*on his entry*. The invoices must be presented “*in the same state in which they were received*.”

Again, allow me to refer particularly to the whole of Circular No. 23, of October 12th, 1849,* and to quote therefrom.

designated for appraisement as they may deem necessary for the purposes aforesaid. These samples, whenever practicable, are to be returned to the public store on completion of the examination and appraisement. For the information of the appraisers, it is deemed proper to require that in all cases where appraisements are ordered on entry of any goods, the collector shall cause to be minuted in pencil at the time, on the invoice, opposite the articles, the schedule by letter in the tariff of 1846, under which, in the opinion of the collector, the duty is to be levied. * * * * *

R. J. WALKER, *Secretary of the Treasury*.

*Circular Instructions to Collectors and other Officers of Customs.

TREASURY DEPARTMENT, }
 October 12, 1849. }

The following instructions and regulations are issued for the gov-

"Invoices produced on entry, sworn to and duly certified, &c.,
"must be *immediately* sent to the United States Appraisers."

* * "The United States Appraisers and other persons
"employed in their department should be careful not to express
"opinions in regard to the value of any goods not submitted
"for their official action."

ernment of the officers of the Customs, with a view to insure uniformity at the respective ports in the practical execution of certain provisions of the Revenue and Collection laws, deemed essential for the proper security of the revenue.

First. It is represented that importers are in the practice of omitting to produce invoices of merchandise on the alleged ground that none have been received, and asking entry to be allowed on appraisal under the provisions of the 2d section of the supplemental Collection act of 1st March, 1823.

The frequency of these occurrences forbid the idea, that the non-reception of an invoice usually proceeds from mistake or accident, as contemplated by the act, but induces the belief of intention and design, probably with the view of evading the additional duty imposed by the 17th section of the act of 30th August, 1842, and the 8th section of the existing Tariff act of 30th July, 1846. In all cases of this kind, application by the owner or importer must be made in writing, through the Collector, to the Department, for permission to enter any such goods on appraisal, said application to be authenticated by the oath or affirmation of the party, setting forth that no invoice of said goods has been received, and the cause, to the best of his knowledge and belief, to be accompanied by a statement of the Collector of all the circumstances attending the transaction within the knowledge of said Collector.

Where permission to make entry shall be refused by the Department, the goods, wares, and merchandise must be deposited in public store, there to remain at the expense and risk of the owner, until such invoice be produced, subject to the provisions of existing laws.

Where entry may be permitted by the Department, bond must first be taken with due security for the production of a proper invoice of the same, within the time prescribed in the 2d section of the act of 1st March, 1823, in a penal sum equal to double the amount of the estimated duties on the entire importation; whereupon entry on appraisal may take place, and on due payment of the duties, permit for delivery of the goods may be granted. Upon production of the invoice, the importer must, in pursuance of his bond aforesaid, pay any amount of duty to which it may appear by such invoice the said goods, wares, and merchandise are subject over and above the amount of duties estimated on said appraisalment.

No entry for warehousing can be allowed, where no invoice accompanies the importation.

Second. Additions to entries of purchased goods, under the 8th section of the Tariff act of 30th July, 1846. Where goods have been actually purchased, the law requires the invoice to state the true *cost*,

If I do not misapprehend the meaning of language, "the United States Appraisers and all other persons employed in their department," are *forbidden* the expression of an opinion relating to the value of an invoice, or the goods and charges in an invoice, which is the same thing, until it has undergone the

and not the market value abroad, on which value, with certain added charges, the duties are to be assessed. The privilege, therefore, given in the 8th section of the act referred to, is to enable importers of any goods that have been actually purchased, on making entry of the same, to add to the cost given in the invoice to bring it up to the *true market value abroad*, and by so doing, exempt the goods from the additional duty imposed by said section. The additions contemplated by the law in such cases must take place at the time of making entry, and cannot be allowed at any subsequent period.

Where imported goods have been obtained by the owner in any other way than by *actual purchase*, the law requires the invoice to exhibit the fair market value abroad, consequently the privilege of the 8th section, before referred to, does not inure in such cases, and no addition to the market value declared in the invoice can be allowed at the time of making entry. If the appraised value in these cases shall exceed by ten per centum or more the invoice value, then the additional duty imposed by the 17th section of the Tariff act of 30th August, 1842, must be exacted.

In cases where on proper ascertainment there shall prove to be an excess of quantity of any article or articles over the quantity stated in the invoice, and the United States appraisers shall be of opinion that such excess does not arise from mistake, accident, or other excusable cause, but from fraudulent intent and design on the part of the shipper, and the Collector concurring in such opinion, the invoice and importation should be deemed fraudulent, and seizure and proceedings to confiscate the goods should immediately take place. But where no intention of fraud is manifested in the opinion of the appraisers and Collector, the proper duty should be exacted on the full quantity ascertained, together with the additional duty where the same may accrue by reason of any excess in quantity over that given in the entry.

Where the value declared in the entry shall, on due appraisement of the goods, be found to be so far below the foreign cost or market value as to raise a presumption of being fraudulently invoiced, seizure and confiscation of the goods should take place under the provisions of the act of 2d March, 1799; and prosecution of the offending party, under the 19th section of the Tariff act of 30th August, 1842, instituted.

Third. Invoices presented on entry of any merchandise must, in pursuance of law, be deposited in the custom-house, and should not be delivered to the importer or his agent for any purpose whatsoever; and no merchandise that may be consigned "to order" can be admitted to entry without an invoice, verified according to law.

Invoices produced on entry, sworn to and duly certified as required by the 23d section of the act of 1st March, 1823, must be immediately

form of entry, perfect and entire on the part of the importer, and comes to the appraiser's office from the collector's office "submitted for their official action."

You ask me to give you explicit information whether I consider the duty of translating invoices and adding charges

sent to the United States appraisers, and be properly registered in their office. The appraisers will then deliver them to such examiner as they may think proper; but in no case should the owner or importer be allowed to indicate or designate the examiner or appraiser of his goods. The course prescribed in the second paragraph of the circular instructions of the 12th June, 1848, in reference to appraisements to ascertain damage, is to be observed in all other cases of appraisement.

Fourth. Bonds required by the provisions of the 10th section of the act of 1st March, 1823, for the production of a duly authenticated invoice, must be exacted in all cases, irrespective of the value of the merchandise embraced in the importation; and on failure to produce the verified invoice within the specified time, payment of the bond must be promptly enforced. The same course must be pursued in respect to bonds taken for the production of consular certificates of the value of depreciated currencies, as well as all bonds taken in cases of transportation or exportation of merchandise under the Warehousing or Drawback acts.

Fifth. Where goods in any package or packages ordered to appraisers' stores may, on appraisement, be advanced in value beyond the value declared in the entry, the entire importation should be appraised, and the duties assessed accordingly, except where the importer may consent that the advanced value on the portion of goods so appraised shall apply to the residue of the same description of goods embraced in the importation, in which case an appraisement of the entire importation need not be made.

Sixth. In respect to oaths or affirmations required to be taken under any Collection or Revenue law of the United States, it is to be remarked, where any person shall knowingly and willingly swear or affirm falsely, or shall procure any person to swear or affirm falsely, the person so offending should be prosecuted under the provisions of the 13th section of the act entitled "An act more effectually to provide for the punishment of certain crimes against the United States," &c., approved 3d March, 1825.

Seventh. Wherever a vessel may be used as a warehouse constructively, an officer of the Customs must be placed on board such vessel, and remain day and night, at the expense of the party desiring the privilege, during the time the vessel remains in port.

In addition to the regulations prescribed in the 16th, 17th, and 18th sections of the Warehousing instructions of the 17th February, 1849, in the case of merchandise withdrawn from public warehouse to be transported, and re-warehoused in another district, the following requirements are to be observed:

1st. Permits issued for withdrawal of any such merchandise from

thereto (of course before entry) as properly belonging to my office. I answer, I do not. On the contrary, I think Circular No. 23 forbids it. I think any addition to, or alteration of an invoice, by any one, after it has been sworn to as a true invoice by an exporter, before entry by the importer, to be illegal. I

warehouse must be placed in the hands of an Inspector of the Customs to superintend the lading of the same, and a return to that effect made by said Inspector upon the transportation entry.

2d. Upon receipt, by the Collector of the port to which the merchandise may be destined for re-warehousing, of the triplicate copy of entry and certified invoice, said Collector shall, on the arrival of the merchandise, direct an Inspector of the Customs to take charge of the same, and deposit it in public store.

Eighth. It is represented, that, at some of the ports, clerks of commercial firms, brokers, and agents of express lines, are permitted to make oath and entry of merchandise imported by other persons. On this point it is to be observed, that where the owner or consignee is present at the port of importation, oath and entry must be made by such owner or consignee, and no entry can be permitted to be made by any clerk or agent, except where duly authorized to act during the necessary absence of the owner or consignee. Nor can any clerk or hired person in the constant employment of another, become principal or surety to any bond to which his employer is a party.

Ninth. It is alleged that persons employed in duties in relation to the collection of the revenue at some of the custom-houses are in the practice of preparing papers, returns, &c., for importers and others, transacting business with the custom-house, and receiving for such services compensation or pay not authorized by law. This practice is illegal, and Collectors are enjoined, in all cases of the kind coming to their knowledge, to enforce the provisions of the 73d section of the act of 2d March, 1799, and the 17th section of the act of 7th May, 1822.

Tenth. The United States appraisers, and other persons employed in their department, should be careful not to express opinions in regard to the value of any goods not submitted for their official action.

Eleventh. Clerks or other persons employed in the appraisers' or other public stores, are expressly prohibited from appropriating to their use, or selling or disposing of any article that may have been used for covering or securing any imported merchandise, as also the drainage of sugar, leakages of molasses, liquors, &c.

Twelfth. The particular attention of Collectors is called, and a strict observance requested, to the circular instructions issued by the Department, under date of the 20th August, 1845, respecting the proper verification of invoices, it being represented by some of the Consuls, that the law and instructions are frequently disregarded by foreign shippers, and are not duly enforced by Collectors at some of the ports.

W. M. MEREDITH,
Secretary of the Treasury.

think the power to add *to the entry*, over the value stated in such invoice, rests solely with the importer, *at the time of entry*, and subsequently, on appraisement, should it be found necessary, with the United States Appraisers.

The law points out to the importer in the 8th Section of the Act of the 30th July, 1846, his privilege. If he chooses to have his invoice submitted for appraisement, without the addition of charges, he must abide the consequences. The law gives him his option.

I also think that the Collector can properly call upon the importer to furnish a copy of an invoice he may receive in a foreign language, and which he may present at the Custom House for entry, translated into the language in which the laws of the United States are written.

With these views, I respectfully return inclosed herewith, the Invoice received in your letter of 9th instant.

I am, very respectfully,

Your obedient servant,

J. VINCENT BROWNE, *Appraiser*.

HON. T. BUTLER KING, Collector.

[NOTE.—As the question of the Collector, “whether your present force, &c.,” is not referred to by the Appraiser, it is presumed, as the Appraisers are as distinct from the Collector as the Naval Officer and the Surveyor, and have the appointment of their own force, that it was not considered pertinent.]

The Collector of San Francisco to the Appraiser.

Collector's Office, Custom House, }
San Francisco, June 11th, 1852. }

Sir:—

I have received your letter of yesterday's date. In it you discuss two questions. 1st; As to a translation of an Invoice and who is to make it; and 2d, what additions if any are necessary to be made, and who is to make them. On the first you decide that you are "clearly of the opinion that it is incumbent on the party who presents any paper to a Custom House of the United States to produce with it a correct translation." Conceding this position which may be done without affecting the point at issue, the question remains, is the Custom House to accept such translation without taking measures to verify it, and can it be verified otherwise than by a sworn officer of the Government who is thoroughly acquainted with the language in which the original is written? I am very clearly of the opinion that it must be verified by such an officer—that we cannot take any paper which may be produced as a translation to be such without examination. Then where must this be done; in the appraisers, or collector's office? Wherever it is done, it must be before the entry is made, to enable the Collector's clerk to compare and examine said entry and invoice as required by the 36th Section of March 2d, 1799. As you decline performing it, and the Treasury Department has directed the dismissal of the Invoice translator, we must I presume take the Importer's translation which he may make to subserve his own interests. I had heretofore understood that your office claimed the duty of translating invoices prop-

erly belonged to it, and hence submitted the question in my letter of the 9th instant.

The 2d question is ; What additions if any are necessary to be made and who is to make them ? To this you reply, "I think the power to add *to the entry* over the value stated in "the invoice rests solely with the Importer, *at the time of entry*, "and subsequently on appraisement with the United States "appraisers."

That the "power to *add to the entry* over the value stated "in the invoice rests solely with the Importer, *at the time of "entry* " is so clear as not to admit of dispute. The question proposed in my letter of the 9th instant, relative to the additions of charges, was intended simply to refer to the fact, that Importers desiring to make entry of goods have the right to inquire what *charges* the Law requires should be added to the Foreign Market value for the assessment of duty, and courtesy if not duty requires they should obtain such information. In addition, the giving of such information previous to the entry facilitates the transaction of the Custom House business, and obviates the necessity which, if it were not given, would very frequently arise, of making new entries, and requiring fresh examinations by the entry clerks.

You say the power to add to the entry—meaning of course, as it is in reply to my enquiry, the power to add the *charges*—rests solely, subsequently to the entry "on appraisement, with "the United States Appraisers." I must here very decidedly differ with you. This duty of the addition of charges is in my opinion solely and exclusively confided to the Collector, as is clearly shown by the whole course of legislation and Circular to which you have referred.

The Act approved April 20, 1818, (vol. 3d, p. 433, U. S. Laws,) section 4th provides that the ad valorem rates of duty "shall be estimated" (by the Collector of course,) "by adding 20 "per cent to the actual cost thereof, if imported from the Cape "of Good Hope, or from any island, port or place, beyond the "same, and 10 per cent on the actual cost thereof, if imported "from any other place or country, including all charges, except

“Commissions, outside packages and insurance.” Sec. 9, of same Act provides for the appointment of Appraisers in various ports who are “to make oath diligently and faithfully to “examine such goods, wares and merchandise as the Collector “may direct, and truly to report to the best of their knowledge “and belief, *THE TRUE VALUE THEREOF WHEN PURCHASED at the “place or places from whence the same WERE IMPORTED.*” Sec. 11, provides that when the Collector suspects goods “have “been invoiced below their true value * * * *in their “actual state of manufacture at the place from whence they were “imported,* such Collector shall direct the same to be appraised “in the manner prescribed by the 9th Section.”

The Act approved March 1st, 1823, (vol. 3, p. 729,) Sec. 5 provides that in estimating ad valorem duties, to the “actual “cost, if purchased, or to the actual value if procured otherwise “than by purchase, or *TO THE APPRAISED VALUE IF APPRAISED,* “there shall be added” (by the Collector of course,) “all charges “except insurance,” and also 20 per centum or 10 per centum on the cost value and charges according to the place whence imported, with a proviso that goods imported from a country other than that of production shall be *appraised at the current value at the time of exportation in the country where produced.* Sec. 16, gives directions for the appraisement of the *value of the merchandize* according to the provisions of the 5th Section.

The Act approved May 19th, 1828, (vol. 4, p. 271,) Sec. 8, provides that in all cases where an ad valorem rate of duty shall be imposed it shall be the duty of the Collector “to cause *the actual value thereof,* at the time purchased, and place from which “the same shall have been imported into the United States, “to be appraised, estimated and ascertained;” and it shall be the duty of the Appraisers “to ascertain, estimate and appraise “*the true and actual VALUE,* any invoice or affidavit thereto, “to the contrary notwithstanding, of the said goods, wares and “merchandize *at the time purchased and place from whence the “same* shall have been imported into the United States.” To this value there is to be added (by the Collector of course,) all charges except insurance and 20 per cent or 10 per cent

according to the place whence imported, and the duties are to be assessed on such aggregate amount, and there is a proviso, the same as that to the 5th Sec. of the Act of March 1, 1823.

The Act approved May 28th, 1830, (vol. 4, p. 409,) provides for the appointment of an additional appraiser and four assistant appraisers who are to be governed by the provisions of law already existing in making appraisements.

The Act approved July 14th, 1832, (vol. 4, p. 583,) in Sec. 7, contains precisely the same directions as to the duties of the appraisers as Sec. 8 of the Act of May 19, 1828. Sec. 15 provides that duties "shall be estimated" (by the Collector of course,) "in the manner following; to the actual cost, if the same shall have been actually purchased, or the actual value if the same shall have been procured otherwise than by purchase, at the time and place when and where purchased or otherwise procured, or to the APPRAISED VALUE if appraised, *shall be added all charges* except insurance."

The Act approved Aug't 30th: 1842, (vol. 5, p. 548,) incorporates in Sec. 16 the provisions of Sec. 7 & 15 of the Act of July 14th, 1832, providing that it shall be *the duty of the COLLECTOR* to cause the actual *market value or wholesale price* in the principal markets of the country whence the goods are imported "to be appraised, estimated and ascertained, and to such value or price, *to be ascertained in the manner provided in this act*, shall be added all costs and charges except insurance, and including in every case, a charge for commissions at the usual rates as the true value at the port where the same may be entered, upon which the duties shall be assessed;" and that it shall be *the duty of the appraisers* "to ascertain, estimate and appraise the true and actual *market value and wholesale price*, any invoice or affidavit to the contrary notwithstanding, of the said goods, wares and merchandize, at the time purchased, and in the principal markets of the country whence the same shall have been imported into the United States." Sec. 22, also clearly indicates that the duty of the appraisers is solely to ascertain the foreign market value, for where there are no appraisers it

imposes the duty of *ascertaining the foreign value* upon the revenue officers to whom is committed the estimating and collection of duties.

The Act approved 30th July, 1846, Sec. 8, while it provides the owner &c., may make such additions in the entry to the cost or value given in the invoice as will raise the same *to the true market value* of such imports in the principal markets *of the country whence imported or where produced*, which is the value the appraisers are to estimate, also provides that he may add "all costs and charges which under existing laws would form part of the TRUE VALUE AT THE PORT WHERE THE SAME MAY BE ENTERED UPON WHICH THE DUTIES SHOULD BE ASSESSED," thus shewing the distinction between the market value abroad, which the appraisers are to ascertain, and the dutiable value here, which the Collector is to ascertain by the addition of those charges to the appraised value, if the importer has failed to add them on making the entry.

The Act approved March 3d, 1851, also makes it the duty of the Collector to cause the actual market value or wholesale price of goods at the time of exportation in the principal markets of the country whence exported, to be appraised, estimated and ascertained, and to such value *is to be added* all costs and charges, &c. Circular No. 48 very plainly says that the addition of charges is a very different thing to appraising, estimating and ascertaining the actual market value or wholesale price at the period of exportation, which is the sole duty of the appraisers.

The whole course of legislation is therefore clearly and expressly against the right which I understand you to claim in your letter of yesterday, viz: the addition of charges to the Foreign market value. I conceive the law is very clear and explicit, that it is the duty of the appraisers to ascertain by all means in their power *the true and actual market value of goods in the principal markets of the Country whence the goods are imported*, and when they have ascertained that, then the Collector is to add the charges directed by law to ascertain the

true value at the port where entered, upon which duties should be assessed.

The Circular No. 23, to which you refer me, only strengthens this view, and the provisions which you quote that the Appraisers and those connected with their Department are to "be careful not to express opinions in regard to *the value of goods* not submitted for their official action," could not apply to the giving of information as to what *charges* the law requires to be *added to that value*, when requested either *before* or after the invoice is sworn to. The giving of *such* information is neither illegal nor contrary to the regulations of the Department.

For the future therefore all charges directed by law to be added to the appraised value of imported merchandize will be added in this office.

Very respectfully,

Your obedient servant,

T. BUTLER KING, *Collector*.

J. VINCENT BROWNE, Esq., U. S. Appraiser, San Francisco.

The Appraiser of San Francisco to the Collector.

Custom House, San Francisco, }
 Appraiser's Office, 14th June, 1852. }

Sir:—

I have to acknowledge receipt of your communication of the 11th instant.

I have read it with consideration ; and in as much as your views, if adopted, would change the whole system of appraisement of imports, as I understand that system, I deem it my duty to submit the correspondence to the Treasury Department.

The opinions of the General Appraiser, (Charles Bradley, Esq.,) on his return here, who understands and has charge of the adjustment of the subjects of the correspondence, may have more weight with you than mine seems to have had. To his experienced opinions I shall feel bound to submit, until a reply is received from the Treasury Department.

Very respectfully,

Your obedient servant,

J. VINCENT BROWNE, *Appraiser.*

Hon. T. BUTLER KING, Collector.

The Collector of San Francisco to the Appraiser.

Custom House, San Francisco, }
 Collector's Office, June 15, 1852. }

J. VINCENT BROWNE, Esq., U. S. Appraiser.

SIR :—

I have to acknowledge the receipt of your letter of the 14th instant, stating that my “ views, if adopted, would “ change the whole system of appraisement of imports, as I ” (you) “ understand that system,” and therefore you deem it your “ duty to submit the correspondence to the Treasury “ Department.”

I desire in acknowledging the receipt of the above letter to call your attention to the fact that my views do not affect the system of appraisements at all, but simply and solely affect the question of *who* is to add certain charges *after* the appraisement required by law has been made, the laws clearly and explicitly, from 1818 down to the present time directing those charges *to be added to the appraised value of Foreign merchandize for the purpose of estimating duties.*

Very respectfully,

Your obedient servant,

T. BUTLER KING, *Collector.*

**The Appraiser of San Francisco to the Secretary
of the Treasury.**

Custom House, San Francisco, }
Appraiser's Office, 15th June, 1852. }

Sir:—

Herewith I enclose a copy of correspondence between Mr. King the Collector of this District, and myself upon the subject of Appraisements, &c., to which allow me to invite the attention of Department. * * * * *

I am, very respectfully,

Your obedient servant,

J. VINCENT BROWNE, *Appraiser*

Hon. THOMAS CORWIN, Sec'ry of the Treasury, Washington.

The Appraiser of San Francisco, to the Appraiser at large.

Custom House, San Francisco, }
Appraiser's Office, 22d June, 1852. }

CHARLES BRADLEY, Esq., U. S. General Appraiser, now at
San Francisco.

Sir :—

I avail myself of your return from your Southern tour, to submit to you the correspondence betwixt the Collector of this District and myself, on the subject of appraisements and the translating of invoices, and to ask your own opinions upon those subjects.

You are aware that, instead of requiring of the importer, according to law, to place upon the entry of his goods, all the dutiable charges thereon, the Collector has assumed to add to such entry, indiscriminately, $2\frac{1}{2}$ per cent, as such charges. The absurdity of such course I have failed to impress upon him, although I have presented this strong case : “ A package “ of Jewelry valued at \$5,000 ; the charges upon which could “ not, exclusive of purchasing commission, exceed \$10, is “ saddled with “ Shipping charges ” $2\frac{1}{2}$ per cent ; while a cargo “ of Lumber valued on shore at \$5,000, is charged with the “ same shipping charges only, viz, $2\frac{1}{2}$ per cent.” I am induced to believe that such course has led many honest importers into the error of supposing, that the addition of $2\frac{1}{2}$ per cent as “ charges ” to their entry, when the actual charges were omitted in their invoices, was the law in the case ; and that they have informed their correspondents abroad this was the case, thus

disseminating error, and causing bitter feelings towards my office, when my duty requires me, on appraisement, to add the actual dutiable charges to their invoices.

It seems to me that no honest importer, if made aware of the legal dutiable charges required of him to be added to his invoices, or if therein omitted, to be added to his entry, (which I believe you are aware I have always endeavored to point out to them and to impress upon them,) would fail to add them himself.

I cannot comprehend a state of obtuseness of mind that can construe "COMMISSION at the usual rate, but in no case less than two and a half per cent, and where there is a distinct brokerage, that to be added," into SHIPPING CHARGES at two and a half per cent. The words "a Commission," are as well understood in a commercial sense, as any others in our tongue. The dictionary definition of Commission is, "the allowance made to a factor or commission merchant for transacting business." "In *commerce*, the state of acting under authority in the purchase and sale of goods for another. To trade or do business *on commission*, is to buy or sell for another by his authority. Hence, the allowance made to a factor or commission merchant for transacting business, which is a certain rate per cent. of the value of the goods bought or sold."

However, in this correspondence I have given the law and circular instructions, which is the law for our governance, and have plainly stated my views of them. The Collector has done the same. I shall be glad to have your views, and will conform my practice to them, till reversed by Treasury Department, to which I have submitted the correspondence

I am, very respectfully,

Your obedient servant,

J. VINCENT BROWNE, *Appraiser*.

The Appraiser at large, to the Appraiser of San Francisco.

San Francisco, June 23d, 1852.

Sir:—

I am in receipt of your note of yesterday, with the accompanying correspondence of the Collector of this District and yourself in relation to the subject of translating invoices and the addition of charges thereto.

I have carefully examined the correspondence referred to, and fully concur with your views in relation to both subjects. The ground taken by you is in accordance with law and therefore incontrovertible.

I am aware of the practice you mention, that when there are no “charges” named on an invoice, there is added to the entry in the Collector’s office, as *Shipping charges*, $2\frac{1}{2}$ per cent, indiscriminately, upon every species of merchandize. I have endeavored, as you say you have done, to correct it. It has been represented to me that there is a law commanding this charge to be made; I have asked for it, but it has not been shewn to me; its absurdity would contradict the idea of its existence.

It is unquestionably the duty of the importer of merchandize to add *to his entry*, all the legal charges, if they should be omitted on his invoice. It is a *privilege* granted to him by the 8th Section of the Tariff act of 1846, not granted by any other act; and if he does not do it, he must suffer the consequences.

And it is equally unquestionable, that if the requirements of law in these cases, were made known to importers, where it should be found necessary, at the “Entry Desk” in the Col-

lector's office, at the time of entry, there would be found very few who would not add the *actual* charges upon their importations.

Respectfully,

CHARLES BRADLEY, *Gen'l Appraiser*.

J. VINCENT BROWNE, Esq., U. S. Appraiser, San Francisco.

**The Secretary of the Treasury to the Appraiser
of San Francisco.**

Treasury Department, }
August 11th 1852. }

Sir :—

Your letter of the 15th June last and accompanying papers respecting the powers and duties of yourself and Collector in reference to dutiable charges, have been received and examined, and I forward for your information as to the views of the Department, a copy of a letter to the Collector on the subject, under this date.

Very respectfully,

Your obedient servant,

THOS. CORWIN, *Sec'y of the Treasury.*

J. VINCENT BROWNE, Esq., U. S. Appraiser, San Francisco,
California.

**The Secretary of the Treasury to the Collector
of San Francisco, California.**

Treasury Department, }
August 11th, 1852. }

Sir :—

I acknowledge the receipt of your letter of 15th June last, and the accompanying papers, presenting for the consideration of the Department, the subject of the respective powers and duties of the Collector and Appraisers, as to the determination of the *charges* liable to duty.

Having carefully considered the subject, I am of the opinion that it falls within the province of the Appraisers to determine the amount of dutiable charges. To say nothing of other provisions of law and the general scope of the duties and powers of the Appraisers, this would seem to follow from the terms of the 8th Section of the Tariff act of 1846.

It is there made the duty of the Appraisers, after the Importer has made an entry, to ascertain the dutiable value of the importation, to be compared with the value declared on the entry. The dutiable value necessarily includes the charges liable to duty, and as the Appraisers are required to ascertain the former, it follows as a matter of course, that they must determine the latter also. Indeed, it would seem to fall naturally and properly within the province of the Appraisers, who are supposed to be conversant with the subject, to ascertain and determine the dutiable charges, as well as the general market value abroad of foreign imports.

As to the question, by whom the translation into English, of an Invoice in a foreign tongue, is to be furnished, I have to

state, that it is the duty of the Importer who offers to make an entry at the Custom House, to present it in an intelligible form. The law of 1799 requires him to make it in writing ; and that it shall comprise, among other things, all the items embraced in an invoice. Of course, the entry thus made in writing, must be in the English language ; and the requirement, surely, presupposes a translation (if the Invoice is in a foreign tongue) or an understanding of it at least, by the person preparing or making the entry. For the purpose of comparing the Invoice and entry it will be competent for you to require the Importer to present with his entry a translation of the Invoice, verified and authenticated, if necessary, by some competent Linguist ; and it is not likely that the Importer can fail to find at your port some person, in whose competency in that respect you could safely confide. It is presumed also, that at San Francisco, there are persons whose business or profession is that of a Translator of papers connected with commerce or the courts. A translation presented by the Importer and verified by such a person would suffice.

The translation so furnished, should accompany the original reference to the Appraisers. Should you find in any case that the Appraisers had omitted a dutiable charge, or added an item not chargeable with duty, you should call their attention to the fact with a view to an amendment. Of course, there is no objection to yourself or the Appraisers' pointing out the provisions of law in relation to dutiable charges or other matters, in answer to the enquiries of persons doing business at the Custom House.

You will please conform the practice at your port to the views contained in this communication.

Very respectfully,

Your obedient servant,

THOS. CORWIN, *Sec'y of the Treasury.*

T. BUTLER KING, Esq., Collector of Customs, San Francisco,
California.

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